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Paper No. 14
Bottorff

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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Panline U.S.A., Inc.

Serial No. 75/298,924

Jonathan E. Grant of Grant Patent Services for Panline
U.S.A., Inc.

Craig D. Taylor, Managing Attorney, Law Office 111

Before Seeherman, Hairston and Bottorff, Administrative
Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant seeks registration on the Principal Register
of the mark FANTASTIC FRAMES for "hobby craft kits
comprising shimmer stones, beads, charms, puff stars, and
hearts to decorate picture frames."¹ Registration was
refused under Trademark Act Section 2(d), 15 U.S.C.

¹ Serial No. 75/298,924, filed May 27, 1997. The application is
based on use in commerce under Trademark Act Section 1(a), and
applicant alleges March 1, 1994 as the date of first use of its
mark anywhere and the date of first use of the mark in commerce.
Applicant has disclaimed the exclusive right to use FRAMES apart
from the mark as shown.

§1052(d), on the ground that applicant's mark, as applied to the identified goods, so resembles the mark FANTASTIC FRAMES, registered for "picture frames, namely, display devices for photographs and other items composed of glossy coated cardboard imprinted with various thematic characters,"² as to be likely to cause confusion, to cause mistake, or to deceive. When the refusal was made final, applicant filed this appeal.

Applicant and the Trademark Managing Attorney filed main briefs on appeal. Applicant did not file a reply brief, nor did applicant request an oral hearing. We affirm the refusal to register.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in

² Registration No. 2,191,362, issued September 22, 1998.

the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We find that applicant's mark is identical to the cited registered mark in terms of appearance, sound and connotation, and that applicant's mark and the cited registered mark present identical overall commercial impressions. Contrary to applicant's arguments, applicant's trade dress, the lettering style in which applicant's mark appears on the goods, and applicant's asserted use of its house mark ALEX in close proximity to the mark sought to be registered are all immaterial to our determination. Applicant seeks to register the mark FANTASTIC FRAMES, in typed form, and that is the mark which must be compared to the cited registered mark for purposes of our likelihood of confusion analysis. *See, e.g., Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 842 (Fed. Cir. 2000); *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, n.4 (Fed. Cir. 1993); *Vornado, Inc. v. Breuer Electric Mfg. Co.*, 156 USPQ 340 (CCPA 1968); *Interstate Brands Corp. v. McKee Foods Corp.*, 53 USPQ2d 1910 (TTAB 2000); *National Football League v. Jasper Alliance Corp.*, 16 USPQ2d 1212 (TTAB 1990).

We turn next to the issue of the similarity between applicant's goods and the goods identified in the cited

registration. It is not necessary that these respective goods be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association or connection between the producers of the respective goods. *See In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

Essentially, applicant's goods and registrant's goods are both novelty-type picture frame products. This basic underlying similarity between the products outweighs their superficial differences, e.g., the fact that applicant's picture frames are part of a kit which allows them to be decorated by the purchaser while registrant's picture frames are pre-decorated with "various thematic characters." We find that applicant's goods and registrant's goods are sufficiently closely related that

source confusion is likely to result if both products are sold under the identical mark FANTASTIC FRAMES.

Moreover, in view of the close commercial relationship between applicant's and registrant's goods, and in the absence of any restrictions or limitations in either applicant's or registrant's identification of goods, we presume that applicant's goods and registrant's goods move in the same trade channels and are marketed to the same classes of customers. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). In particular, we find that applicant's goods and registrant's goods are likely to be sold in the same types of retail outlets, i.e., toy stores, as applicant itself has acknowledged. We also find that the purchasers of the respective goods are likely to have varying levels of sophistication, and that because the goods are relatively inexpensive items likely to be purchased on impulse, purchasers will not necessarily exercise a great degree of care in making their purchasing decisions.

Based on these findings with respect to the relevant *du Pont* evidentiary factors, especially as to the identical marks and the highly similar and otherwise closely related goods, we conclude that a likelihood of confusion exists, and that registration of applicant's mark is barred under Trademark Act Section 2(d).

Decision: The refusal to register is affirmed.³

E. J. Seeherman

P. T. Hairston

C. M. Bottorff

Administrative Trademark Judges
Trademark Trial and Appeal Board

³ Applicant's assertions that it is the prior user of the mark and that "there are serious questions as to the declaration" signed by the registrant constitute impermissible collateral attacks on the validity of the registration which are immaterial to and unavailing in this ex parte appeal, and we have given them no consideration. See, e.g., *In re Dixie Restaurants*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997); TMEP section 1207.01(c)(v).